



House of Representatives

General Assembly

File No. 258

January Session, 2009

Substitute House Bill No. 6400

House of Representatives, March 26, 2009

The Committee on Human Services reported through REP. WALKER of the 93rd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE STRENGTHENING OF NURSING HOME OVERSIGHT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 17b-352 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) For the purposes of this section and section 17b-353, "facility"
4 means a residential facility for the mentally retarded licensed pursuant
5 to section 17a-277 and certified to participate in the Title XIX Medicaid
6 program as an intermediate care facility for the mentally retarded, a
7 nursing home, rest home or residential care home, as defined in section
8 19a-490.

9 (b) Any facility [which] that intends to (1) transfer all or part of its
10 ownership or control; [prior to being initially licensed;] (2) introduce
11 any additional function or service into its program of care or expand
12 an existing function or service; or (3) terminate a service or decrease
13 substantially its total bed capacity, shall submit a complete request for
14 permission to implement such transfer, addition, expansion, increase,
15 termination or decrease with such information as the department

16 requires to the Department of Social Services, provided no permission
17 or request for permission to close a facility or transfer ownership of
18 such facility is required when a facility in receivership is closed by
19 order of the Superior Court pursuant to section 19a-545. The Office of
20 the Long-Term Care Ombudsman pursuant to section 17b-400 shall be
21 notified by the facility of any proposed actions pursuant to this
22 subsection at the same time the request for permission is submitted to
23 the department and when a facility in receivership is closed by order of
24 the Superior Court pursuant to section 19a-545.

25 (c) An applicant, prior to submitting a certificate of need
26 application, shall request, in writing, application forms and
27 instructions from the department. The request shall include [:(1) The]
28 the name of the applicant or applicants [; (2)] and a statement
29 indicating whether the application is for [(A)] (1) a transfer of
30 ownership or control, (2) a new, additional, expanded or replacement
31 facility, service or function, [(B)] (3) a termination or reduction in a
32 presently authorized service or bed capacity, or [(C)] (4) any new,
33 additional or terminated beds and their type. [; (3)] Applications, other
34 than those seeking transfer of ownership or control, shall include (A)
35 the estimated capital cost, [; (4)] (B) the town where the project is or
36 will be located, [;] and [(5)] (C) a brief description of the proposed
37 project. Such request shall be deemed a letter of intent. No certificate of
38 need application shall be considered submitted to the department
39 unless a current letter of intent, specific to the proposal and in
40 accordance with the provisions of this subsection, has been on file with
41 the department for not less than ten business days. For purposes of this
42 subsection, "a current letter of intent" means a letter of intent on file
43 with the department for not more than one hundred eighty days. A
44 certificate of need application shall be deemed withdrawn by the
45 department, if a department completeness letter is not responded to
46 within one hundred eighty days. The Office of the Long-Term Care
47 Ombudsman shall be notified by the facility at the same time as the
48 letter of intent is submitted to the department.

49 (d) Any facility acting pursuant to subdivision (3) of subsection (b)

50 of this section shall provide written notice, at the same time it submits
51 its letter of intent, to all patients, guardians or conservators, if any, or
52 legally liable relatives or other responsible parties, if known, and shall
53 post such notice in a conspicuous location at the facility. The notice
54 shall state the following: [(A)] (1) The projected date the facility will be
55 submitting its certificate of need application, [(B)] (2) that only the
56 department has the authority to either grant, modify or deny the
57 application, [(C)] (3) that the department has up to ninety days to
58 grant, modify or deny the certificate of need application, [(D)] (4) a
59 brief description of the reason or reasons for submitting a request for
60 permission, [(E)] (5) that no patient shall be involuntarily transferred
61 or discharged within or from a facility pursuant to state and federal
62 law because of the filing of the certificate of need application, [(F)] (6)
63 that all patients have a right to appeal any proposed transfer or
64 discharge, and [(G)] (7) the name, mailing address and telephone
65 number of the Office of the Long-Term Care Ombudsman and local
66 legal aid office.

67 (e) The department shall review a request made pursuant to
68 subsection (b) of this section to the extent it deems necessary,
69 including, but not limited to, in the case of a proposed transfer of
70 ownership or control, [prior to initial licensure,] the financial viability
71 of the applicant, the impact on the facility rate, any real property lease
72 or debt instrument, any nursing facility management services
73 agreement and the financial condition of the applicant, the financial
74 responsibility and business interests of the transferee and the ability of
75 the facility to continue to provide needed services, or in the case of the
76 addition or expansion of a function or service, ascertaining the
77 availability of the function or service at other facilities within the area
78 to be served, the need for the service or function within the area and
79 any other factors the department deems relevant to a determination of
80 whether the facility is justified in adding or expanding the function or
81 service. The commissioner shall grant, modify or deny the request
82 within ninety days of receipt thereof, except as otherwise provided in
83 this section. Upon the request of the applicant, the review period may
84 be extended for an additional fifteen days if the department has

85 requested additional information subsequent to the commencement of
86 the commissioner's review period. The director of the office of
87 certificate of need and rate setting may extend the review period for a
88 maximum of thirty days if the applicant has not filed in a timely
89 manner information deemed necessary by the department. The
90 applicant may request and shall receive a hearing in accordance with
91 section 4-177 if aggrieved by a decision of the commissioner.

92 (f) The Commissioner of Social Services shall not approve any
93 requests for beds in residential facilities for the mentally retarded
94 which are licensed pursuant to section 17a-227 and are certified to
95 participate in the Title XIX Medicaid Program as intermediate care
96 facilities for the mentally retarded, except those beds necessary to
97 implement the residential placement goals of the Department of
98 Developmental Services which are within available appropriations.

99 (g) The Commissioner of Social Services shall adopt regulations, in
100 accordance with chapter 54, to implement the provisions of this
101 section. The commissioner shall implement the standards and
102 procedures of the Office of Health Care Access concerning certificates
103 of need established pursuant to section 19a-643, as appropriate for the
104 purposes of this section, until the time final regulations are adopted in
105 accordance with [said] chapter 54.

106 Sec. 2. Section 17b-339 of the general statutes is repealed and the
107 following is substituted in lieu thereof (*Effective from passage*):

108 (a) There is established a Nursing Home Financial Advisory
109 Committee to examine the financial solvency of nursing homes on an
110 ongoing basis and to support the Departments of Social Services and
111 Public Health in their mission to provide oversight to the nursing
112 home industry [which promotes] on issues concerning the financial
113 solvency of and quality of care provided by nursing homes. The
114 committee shall consist of [seven members: The] the Commissioner of
115 Social Services, or his designee; the Commissioner of Public Health, or
116 his designee; the Secretary of the Office of Policy and Management, or
117 his designee; [the director of the Office of Fiscal Analysis] the

118 Comptroller, or his designee; and the executive director of the
119 Connecticut Health and Education Facilities Authority, or his designee,
120 [; and one representative of nonprofit nursing homes and one
121 representative of for-profit nursing homes appointed by the
122 Governor.]

123 [(b)] The Commissioner of Social Services and the Commissioner of
124 Public Health shall be the chairpersons of the committee. [Any vacancy
125 shall be filled by the appointing authority.]

126 [(c)] (b) The committee, upon receipt of a report relative to the
127 financial solvency of and quality of care provided by nursing homes in
128 the state, shall recommend appropriate action [for improving the
129 financial condition of any nursing home that is in financial distress] to
130 the Commissioner of Social Services and the Commissioner of Public
131 Health. The Commissioner of Social Services shall notify the committee
132 of any nursing home request for an interim rate increase pursuant to
133 section 17b-340.

134 [(d)] (c) Not later than January 1, [1999] 2010, and annually
135 thereafter, the committee shall submit a report on its activities to the
136 joint standing committees of the General Assembly having cognizance
137 of matters relating to appropriations, human services and public health
138 and to the select committee of the General Assembly having
139 cognizance of matters relating to aging, in accordance with the
140 provisions of section 11-4a.

141 (d) Not later than October 1, 2009, and quarterly thereafter, the
142 committee shall meet with the chairpersons and ranking members of
143 the joint standing committees of the General Assembly having
144 cognizance of matters relating to human services, appropriations and
145 public health, and the Long-Term Care Ombudsman to discuss
146 activities of the committee relating to the financial solvency and
147 quality of care provided by nursing homes.

148 Sec. 3. (NEW) (*Effective from passage*) (a) For the fiscal year
149 commencing July 1, 2010, and each fiscal year thereafter, each chronic

150 and convalescent nursing home or rest home with nursing supervision
151 shall obtain an annual financial audit of its operations conducted by an
152 independent auditor, and shall provide a copy of the audit report to
153 the Commissioner of Social Services. The commissioner may also
154 require each owner of a chronic and convalescent nursing home or rest
155 home with nursing supervision to submit to the Department of Social
156 Services quarterly reports of accounts payable in a format prescribed
157 by the commissioner. If such reports indicate a facility may be
158 experiencing financial distress, the commissioner shall require such
159 facility to submit specific financial information, including, but not
160 limited to, debt agreements and interim financial statements.

161 (b) The commissioner may require a nursing facility management
162 services certificate holder, as defined in section 19a-561 of the general
163 statutes, as amended by this act, or any person or entity that has a
164 beneficial ownership interest of ten per cent or more in such holder or
165 in a chronic and convalescent nursing home or rest home with nursing
166 supervision, to report information concerning the financial condition
167 of any facility owned, in this state or another state, by such person or
168 entity, in a format prescribed by the commissioner. For purposes of
169 this subsection, beneficial ownership includes ownership through any
170 level or relationship of parent and subsidiary corporations and
171 partnerships.

172 (c) If the Commissioner of Social Services determines, based on a
173 review of the information provided pursuant to subsection (a) or (b) of
174 this section or review of a chronic and convalescent nursing home's or
175 rest home with nursing supervision's annual cost report submitted to
176 the Department of Social Services pursuant to section 17b-340 of the
177 general statutes that a chronic and convalescent nursing home or rest
178 home with nursing supervision has undergone an adverse change in
179 financial condition, the commissioner shall notify the Commissioner of
180 Public Health and may require the nursing home facility to report
181 monthly its cash availability and the status of vendor payments and
182 employee payrolls. The Commissioner of Social Services may require
183 the reporting of other financial information to assist in measuring the

184 financial condition of the nursing home facility.

185 (d) The criteria to be used by the Commissioner of Social Services
186 pursuant to subsection (c) of this section to determine whether a
187 chronic and convalescent nursing home or rest home with nursing
188 supervision has undergone an adverse change in financial condition
189 shall include, but not be limited to, (1) the frequency of Medicaid
190 advances granted in accordance with section 119 of public act 07-1 of
191 the June special session; (2) unfavorable working capital ratios of assets
192 to liabilities; (3) a high proportion of accounts receivable more than
193 ninety days old; (4) a high proportion of accounts payable more than
194 ninety days old; (5) significant increases in accounts payable, unpaid
195 state or municipal taxes, state user fees or payroll-related costs; (6)
196 minimal equity or reserves or decreasing equity or reserves; (7) high
197 levels of debt and high borrowing costs; (8) significant increases in the
198 level of debts and borrowing costs; and (9) significant operating losses
199 for two or more consecutive years.

200 (e) If the Commissioner of Social Services determines that a chronic
201 and convalescent nursing home or rest home with nursing supervision
202 is in financial distress that may lead to the facility having insufficient
203 resources to meet its operating costs, the commissioner shall issue a
204 report of such findings to the Nursing Home Financial Advisory
205 Committee, established pursuant to section 17b-339 of the general
206 statutes, as amended by this act, in a format prescribed by the
207 committee.

208 Sec. 4. (NEW) (*Effective from passage*) No nursing facility
209 management services certificate holder pursuant to section 19a-561 of
210 the general statutes, as amended by this act, who is a related party to
211 the owner of a chronic and convalescent nursing home or rest home
212 with nursing supervision, shall be paid fees, including expenses from
213 such facility for which it provides such services, in excess of the
214 management fee permitted by the Department of Social Services in
215 setting the rate for such facility pursuant to section 17b-340 of the
216 general statutes, unless the Commissioner of Social Services, after a

217 financial review of such holder, approves a management fee in excess
218 of such rate. For any violation of this section, the Commissioner of
219 Social Services may assess a civil penalty not to exceed the amount by
220 which the fee paid for such services exceeds the approved
221 management fee plus fifteen thousand dollars. A holder may appeal
222 such assessment in accordance with the procedure established in
223 subsection (b) of section 17b-238 of the general statutes. The provisions
224 of this section shall not apply to any management fee in effect on or
225 before April 1, 2009. As used in this section, "related party" means
226 persons or organizations related through an ability to control
227 ownership, family relationship or business association, and includes
228 persons related through marriage.

229 Sec. 5. Section 17b-4 of the general statutes is repealed and the
230 following is substituted in lieu thereof (*Effective from passage*):

231 (a) The Department of Social Services shall plan, develop,
232 administer, operate, evaluate and provide funding for services for
233 individuals and families who are served by the department [who] and
234 are in need of personal or economic development. In cooperation with
235 other social service agencies and organizations, including community-
236 based agencies, the department shall work to develop and fund
237 prevention, intervention and treatment services for such individuals
238 and families. The department shall: (1) Provide appropriate services to
239 individuals and families as needed through direct social work services
240 rendered by the department and contracted services from community-
241 based organizations funded by the department; (2) collect, interpret
242 and publish statistics relating to individuals and families serviced by
243 the department; (3) monitor, evaluate and review any program or
244 service which is developed, operated or funded by the department; (4)
245 supervise the establishment of pilot programs funded by the
246 department in local communities which assist and support individuals
247 and families in personal and economic development; (5) improve the
248 quality of services provided, operated and funded by the department
249 and increase the competency of its staff relative to the provision of
250 effective social services by establishing and supporting ongoing staff

251 development and training; and (6) encourage citizen participation in
252 the development of social service priorities and programs.

253 (b) The Department of Social Services shall study continuously the
254 conditions and needs of elderly and aging persons in this state in
255 relation to nutrition, transportation, home-care, housing, income,
256 employment, health, recreation and other matters. It shall be
257 responsible in cooperation with federal, state, local and area planning
258 agencies on aging for the overall planning, development and
259 administration of a comprehensive and integrated social service
260 delivery system for elderly persons and the aged. The department
261 shall: (1) Measure the need for services; (2) survey methods of
262 administration of programs for service delivery; (3) provide for
263 periodic evaluations of social services; (4) maintain technical,
264 information, consultation and referral services in cooperation with
265 other state agencies to local and area public and private agencies to the
266 fullest extent possible; (5) develop and coordinate educational
267 outreach programs for the purposes of informing the public and
268 elderly persons of available programs; (6) cooperate in the
269 development of performance standards for licensing of residential and
270 medical facilities with appropriate state agencies; (7) supervise the
271 establishment, in selected areas and local communities of the state, of
272 pilot programs for elderly persons; (8) coordinate with the Department
273 of Transportation to provide adequate transportation services related
274 to the needs of elderly persons; and (9) cooperate with other state
275 agencies to provide adequate and alternate housing for elderly
276 persons, including congregate housing, as defined in section 8-119e.

277 [(c) The Department of Social Services, in conjunction with the
278 Department of Public Health, may adopt regulations in accordance
279 with the provisions of chapter 54 to establish requirements with
280 respect to the submission of reports concerning financial solvency and
281 quality of care by nursing homes for the purpose of determining the
282 financial viability of such homes, identifying homes that appear to be
283 experiencing financial distress and examining the underlying reasons
284 for such distress. Such reports shall be submitted to the Nursing Home

285 Financial Advisory Committee established under section 17b-339.]

286 Sec. 6. (NEW) (*Effective from passage*) (a) The Commissioner of Social
287 Services, in consultation with the Banking Commissioner and the
288 executive director of the Connecticut Health and Educational Facilities
289 Authority, shall establish reasonable rates of indebtedness and
290 reasonable real property lease payments for chronic and convalescent
291 nursing homes and rest homes with nursing supervision. No chronic
292 and convalescent nursing home and rest home with nursing
293 supervision licensed in this state, or any owner of the property on
294 which such facility is located who is a related party to the owner of any
295 such facility, shall increase its indebtedness beyond the amount
296 established pursuant to this section or increase its real property lease
297 payments unless approved by the Commissioner of Social Services. As
298 used in this subsection, "related party" means persons or organizations
299 related through an ability to control, ownership, family relationship or
300 business association, and includes persons related through marriage.

301 (b) The proceeds of any loan in which a chronic and convalescent
302 nursing home and rest home with nursing supervision has pledged,
303 granted a lien or otherwise encumbered the assets of such facility shall
304 be used solely for the purpose of operating such nursing home facility
305 or providing improvements to the nursing home facility unless
306 approved by the Commissioner of Social Services. The provisions of
307 this section shall not apply to any indebtedness or lease entered into by
308 a chronic and convalescent nursing home and rest home with nursing
309 supervision on or before April 1, 2009.

310 (c) A chronic and convalescent nursing home or rest home with
311 nursing supervision may submit a request pursuant to this subsection
312 for an increase in indebtedness or lease payments or use of the
313 proceeds of a loan in a manner prescribed by the commissioner. The
314 commissioner may request information as necessary to evaluate the
315 request and shall approve, deny or modify the result not later than
316 sixty days after submission of any such requested information. The
317 commissioner shall approve or modify a request only if the

318 commissioner determines that such request will not materially
319 adversely affect the financial viability of the facility or the quality of
320 patient care.

321 (d) Any violation of subsection (a) or (b) of this section shall
322 constitute a substantial failure to comply with the requirements
323 established under chapter 368v of the general statutes for purposes of
324 disciplinary action pursuant to section 19a-494 of the general statutes.
325 In addition to any action by the Commissioner of Public Health under
326 said section, the Commissioner of Social Services may impose a civil
327 penalty not exceeding twenty-five thousand dollars for each violation
328 and may refer the finding of the Department of Social Services to the
329 Commissioner of Public Health for appropriate action. Any person
330 subject to such civil penalty may appeal such penalty in accordance
331 with the procedure established in subsection (b) of section 17b-238 of
332 the general statutes.

333 Sec. 7. (NEW) (*Effective from passage*) Each chronic and convalescent
334 nursing home and rest home with nursing supervision shall submit
335 annually to the Department of Social Services, along with such
336 facility's annual cost report, proof of its insurance liability coverage for
337 negligence or medical malpractice and damages to property, and the
338 amounts of such coverage on a form prescribed by the Commissioner
339 of Social Services. On or before January 1, 2010, and annually
340 thereafter, the department shall report information concerning
341 insurance liability coverage of such facilities to the joint standing
342 committee of the General Assembly having cognizance of matters
343 relating to human services and the Nursing Home Financial Advisory
344 Committee.

345 Sec. 8. Subsection (b) of section 19a-491 of the general statutes is
346 repealed and the following is substituted in lieu thereof (*Effective*
347 *October 1, 2009*):

348 (b) If any person acting individually or jointly with any other person
349 [shall own] owns real property or any improvements thereon, upon or
350 within which an institution, as defined in subsection (c) of section 19a-

351 490, is established, conducted, operated or maintained and is not the
352 licensee of the institution, such person shall submit a copy of the lease
353 agreement to the department at the time of any change of ownership
354 and with each license renewal application. The lease agreement shall,
355 at a minimum, identify the person or entity responsible for the
356 maintenance and repair of all buildings and structures within which
357 such an institution is established, conducted or operated. If a violation
358 is found as a result of an inspection or investigation, the commissioner
359 may require the owner to sign a consent order providing assurances
360 that repairs or improvements necessary for compliance with the
361 provisions of the Public Health Code shall be completed within a
362 specified period of time or may, in accordance with the provisions of
363 section 19a-494, assess a civil penalty of not more than one thousand
364 dollars for each day that such owner is in violation of the Public Health
365 Code or, if appropriate, in violation of the consent order. A consent
366 order may include a provision for the establishment of a temporary
367 manager of such real property or improvements who has the authority
368 to complete any repairs or improvements required by such order.
369 Upon request of the Commissioner of Public Health, the Attorney
370 General may petition the Superior Court for such equitable and
371 injunctive relief as such court deems appropriate to ensure compliance
372 with the provisions of the consent order. The provisions of this
373 subsection shall not apply to any property or improvements owned by
374 a person licensed in accordance with the provisions of subsection (a) of
375 this section to establish, conduct, operate or maintain an institution on
376 or within such property or improvements.

377 Sec. 9. Subdivision (2) of subsection (b) of section 19a-493 of the
378 general statutes is repealed and the following is substituted in lieu
379 thereof (*Effective October 1, 2009*):

380 (2) Any change in the ownership of a facility or institution, as
381 defined in subsection (c) of section 19a-490, owned by an individual,
382 partnership or association or the change in ownership or beneficial
383 ownership of ten per cent or more of the stock of a corporation which
384 owns, conducts, operates or maintains such facility or institution, shall

385 be subject to prior approval of the department after a scheduled
386 inspection of such facility or institution is conducted by the
387 department, provided such approval shall be conditioned upon a
388 showing by such facility or institution to the commissioner that it has
389 complied with all requirements of this chapter, the regulations relating
390 to licensure and all applicable requirements of the Public Health Code.
391 Any such change in ownership or beneficial ownership resulting in a
392 transfer to a person related by blood or marriage to such an owner or
393 beneficial owner shall not be subject to prior approval of the
394 department unless: (A) Ownership or beneficial ownership of ten per
395 cent or more of the stock of a corporation, partnership or association
396 which owns, conducts, operates or maintains more than one facility or
397 institution is transferred; (B) ownership or beneficial ownership is
398 transferred in more than one facility or institution; or (C) the facility or
399 institution is the subject of a pending complaint, investigation or
400 licensure action. If the facility or institution is not in compliance, the
401 commissioner may require the new owner to sign a consent order
402 providing reasonable assurances that the violations shall be corrected
403 within a specified period of time. Notice of any such proposed change
404 of ownership shall be given to the department at least ninety days
405 prior to the effective date of such proposed change. For the purposes of
406 this subdivision, "a person related by blood or marriage" means a
407 parent, spouse, child, brother, sister, aunt, uncle, niece or nephew. For
408 the purposes of this subdivision, a change in the legal form of the
409 ownership entity, including, but not limited to, changes from a
410 corporation to a limited liability company, a partnership to a limited
411 liability partnership, a sole proprietorship to a corporation and similar
412 changes, shall not be considered a change of ownership if the
413 beneficial ownership remains unchanged and the owner provides such
414 information regarding the change to the department as may be
415 required by the department in order to properly identify the current
416 status of ownership and beneficial ownership of the facility or
417 institution. For the purposes of this subdivision, a public offering of
418 the stock of any corporation that owns, conducts, operates or
419 maintains any such facility or institution shall not be considered a

420 change in ownership or beneficial ownership of such facility or
421 institution if the licensee and the officers and directors of such
422 corporation remain unchanged, such public offering cannot result in
423 an individual or entity owning ten per cent or more of the stock of
424 such corporation, and the owner provides such information to the
425 department as may be required by the department in order to properly
426 identify the current status of ownership and beneficial ownership of
427 the facility or institution. For purposes of this subdivision, beneficial
428 ownership includes ownership through any level or relationship of
429 parent and subsidiary corporations and partnerships. To the extent
430 required by this subdivision, the licensee of such facility or institution
431 shall provide to the department the identities of and any other
432 information required by the department regarding the individual
433 shareholders, partners or members that have a beneficial ownership
434 interest in the facility or institution, as defined in subsection (a) of
435 section 19a-490.

436 Sec. 10. Section 19a-498 of the general statutes is repealed and the
437 following is substituted in lieu thereof (*Effective October 1, 2009*):

438 (a) Subject to the provisions of section 19a-493, as amended by this
439 act, the Department of Public Health shall make or cause to be made a
440 biennial licensure inspection of all institutions and such other
441 inspections and investigations of institutions and examination of their
442 records as the department deems necessary.

443 (b) The commissioner, or an agent authorized by the commissioner
444 to conduct any inquiry, investigation or hearing under the provisions
445 of this chapter, shall have power to inspect the premises of an
446 institution, issue subpoenas, order the production of books, records or
447 documents, administer oaths and take testimony under oath relative to
448 the matter of such inquiry, [or] investigation or hearing. At any
449 hearing ordered by the department, the commissioner or such agent
450 may subpoena witnesses and require the production of records, papers
451 and documents pertinent to such inquiry. If any person disobeys such
452 subpoena or, having appeared in obedience thereto, refuses to answer

453 any pertinent question put to such person by the commissioner or such
454 agent or to produce any records and papers pursuant to the subpoena,
455 the Attorney General, upon request of the commissioner or such agent,
456 may apply to the superior court for the judicial district of Hartford or
457 for the judicial district wherein the person resides or wherein the
458 business has been conducted, setting forth such disobedience or
459 refusal, and said court shall cite such person to appear before said
460 court to answer such question or to produce such records and papers.

461 (c) The Department of Mental Health and Addiction Services, with
462 respect to any mental health facility or alcohol or drug treatment
463 facility, shall be authorized, either upon the request of the
464 Commissioner of Public Health or at such other times as they deem
465 necessary, to enter such facility for the purpose of inspecting programs
466 conducted at such facility. A written report of the findings of any such
467 inspection shall be forwarded to the Commissioner of Public Health
468 and a copy shall be maintained in such facility's licensure file.

469 (d) In addition, the Commissioner of Social Services, or a designated
470 representative of the Commissioner of Social Services, at the request of
471 the Office of Health Care Access or the Nursing Home Financial
472 Advisory Committee or when the Commissioner of Social Services
473 deems it necessary, may examine and audit the financial records of any
474 nursing home facility, as defined in section 19a-521, or any nursing
475 facility management services certificate holder, as defined in section
476 19a-561, as amended by this act. Each such nursing home facility or
477 nursing facility management services certificate holder shall retain all
478 financial information, data and records relating to the operation of the
479 nursing home facility or nursing facility management services for a
480 period of not less than ten years, and all financial information, data
481 and records relating to any real estate transactions affecting such
482 operation, for a period of not less than twenty-five years, which
483 financial information, data and records shall be made available, upon
484 request, to the Commissioner of Social Services or such designated
485 representative at all reasonable times. In connection with an inquiry,
486 examination or investigation, the Commissioner of Social Services or

487 authorized agent may issue subpoenas, order the production of books,
488 records and documents, administer oaths and take testimony under
489 oath. The Attorney General, upon request of said commissioner, may
490 apply to the Superior Court to enforce any such subpoena or order.

491 Sec. 11. Section 19a-503 of the general statutes is repealed and the
492 following is substituted in lieu thereof (*Effective October 1, 2009*):

493 Notwithstanding the existence or pursuit of any other remedy, the
494 Department of Public Health may, in the manner provided by law and
495 upon the advice of the Attorney General, conduct an investigation and
496 maintain an action in the name of the state for injunction or other
497 process against any person or governmental unit to restrain or prevent
498 the establishment, conduct, management or operation of an institution
499 or nursing facility management services agency, without a license or
500 certificate under this chapter.

501 Sec. 12. Section 19a-528a of the general statutes is repealed and the
502 following is substituted in lieu thereof (*Effective October 1, 2009*):

503 For any application of licensure for the acquisition of a nursing
504 home filed after July 1, 2004, any potential nursing home licensee or
505 owner must submit in writing, a change in ownership application with
506 respect to the facility for which the change in ownership is sought.
507 Such application shall include such information as the Commissioner
508 of Public Health deems necessary and shall include whether such
509 potential nursing home licensee or owner (1) has had civil penalties
510 imposed through final order of the commissioner in accordance with
511 the provisions of sections 19a-524 to 19a-528, inclusive, or civil
512 penalties imposed pursuant to the statutes or regulations of another
513 state, during [a] the two-year period preceding the application, (2) has
514 had in any state [intermediate] sanctions other than civil penalties less
515 than ten thousand dollars, imposed through final adjudication under
516 the Medicare or Medicaid program pursuant to Title XVIII or XIX of
517 the federal Social Security Act, 42 USC 301, as from time to time
518 amended, or (3) has had in any state such potential licensee's or
519 owner's Medicare or Medicaid provider agreement terminated or not

520 renewed. [.] The commissioner shall not approve such application to
521 acquire another nursing home in this state for a period of five years
522 from the date of final order on such civil penalties, final adjudication of
523 such [intermediate] sanctions, or termination or nonrenewal, except for
524 good cause shown. [Notwithstanding, the provisions of this section,
525 the Commissioner of Public Health, may for good cause shown, permit
526 a potential nursing home licensee or owner to acquire another nursing
527 home prior to the expiration of said five-year period.]

528 Sec. 13. Section 19a-543 of the general statutes is repealed and the
529 following is substituted in lieu thereof (*Effective October 1, 2009*):

530 (a) The court shall grant an application for the appointment of a
531 receiver for a nursing home facility upon a finding of any of the
532 following: (1) Such facility is operating without a license issued
533 pursuant to this chapter or such facility's license has been suspended
534 or revoked pursuant to section 19a-494; (2) such facility intends to
535 close and adequate arrangements for relocation of its residents have
536 not been made at least thirty days prior to closing; (3) such facility has
537 sustained a serious financial loss or failure which jeopardizes the
538 health, safety and welfare of the patients or there is a reasonable
539 likelihood of such loss or failure; [or] (4) there exists in such facility a
540 condition in substantial violation of the Public Health Code, or any
541 other applicable state statutes, or Title XVIII or XIX of the federal Social
542 Security Act, 42 USC 301, as amended, or any regulation adopted
543 pursuant to such state or federal laws; or (5) such facility is in severe
544 financial distress, as defined in subsection (c) of this section.

545 (b) The court, upon a determination pursuant to subsection (a) of
546 this section that a receiver is appropriate, may, in addition to
547 appointing a receiver for the nursing home facility, appoint a receiver
548 for (1) any person or entity providing nursing facility management
549 services, as defined in section 19a-561, as amended by this act, to such
550 facility; (2) any owner of real property, or improvements thereon, on
551 which such nursing home facility is located; or (3) any legal entity
552 owned or managed by a related party to the nursing home facility

553 owners that provides goods or services to such facility. The court may
554 issue such orders as it deems necessary to any person that controls or
555 possesses assets necessary for the receiver to fulfill its duties as set
556 forth in section 19a-545. As used in this subsection, "related party"
557 means persons or organizations related through an ability to control,
558 ownership, family relationship or business, association, and includes
559 persons related through marriage.

560 (c) As used in this section, "severe financial distress" means: (1)
561 Allowing more than thirty-five per cent of the facility's vendor
562 accounts to be overdue for payment by more than one hundred twenty
563 days; (2) allowing the facility payment of required employee pension
564 or health insurance contributions to be overdue by more than sixty
565 days; (3) maintaining an unfavorable working capital ratio of assets to
566 liabilities for more than one fiscal year; (4) maintaining minimal equity
567 or reserves for more than one fiscal year; (5) incurring significant
568 operating losses for more than one fiscal year; (6) any other criteria
569 which the Commissioner of Social Services may further define in
570 regulations adopted pursuant to the provisions of chapter 54. The
571 commissioner may establish written policies and procedures to
572 implement the provisions of subdivision (6) of this subsection while in
573 the process of adopting such policies and procedures as regulations,
574 provided the commissioner prints notice of the intent to adopt the
575 regulations in the Connecticut Law Journal not later than twenty days
576 after the date of implementation of such policies and procedures. Such
577 policies and procedures shall be valid until the time final regulations
578 are adopted.

579 Sec. 14. Section 19a-546 of the general statutes is repealed and the
580 following is substituted in lieu thereof (*Effective from passage*):

581 (a) A receiver may not be required to honor any lease, mortgage,
582 secured transaction or other contract entered into by the owner of the
583 facility if, upon application to the Superior Court, said court
584 determines that: (1) The person seeking payment under the agreement
585 was an owner or controlling stockholder of the facility or was an

586 affiliate of such owner or controlling stockholder at the time the
587 agreement was made; or (2) the rental, price or rate of interest required
588 to be paid under the agreement was substantially in excess of a
589 reasonable rental, price or rate of interest at the time the contract was
590 entered into.

591 (b) If the receiver is in possession of real estate or goods subject to a
592 lease, mortgage or security interest [which] that the receiver is
593 permitted to avoid under subsection (a) of this section and if the real
594 estate or goods are necessary for the continued operation of the facility
595 under this section, the receiver may apply to the court to set a
596 reasonable rental, price or rate of interest to be paid by the receiver
597 during the duration of the receivership. No allowance for such
598 property costs set by the court shall exceed the fair rental value
599 allowance established by the Commissioner of Social Services in
600 regulations adopted pursuant to section 17b-239. The court shall hold a
601 hearing not later than fifteen days after application is made. Any
602 known owners of the property involved shall receive notice of such
603 application from the receiver at least ten days prior to the hearing.
604 Payment by the receiver of the amount determined by the court to be
605 reasonable is a defense to any action against the receiver for payment
606 or for possession of the goods or real estate subject to the lease,
607 security interest or mortgage involved by any person who received
608 such notice, but the payment does not relieve the owner of the facility
609 of any liability for the difference between the amount paid by the
610 receiver and the amount due under such lease, security interest or
611 mortgage involved.

612 (c) The provisions of this section shall not apply to a lease,
613 mortgage, secured transaction or other contract entered into with any
614 financial institution regulated by a state or federal agency.

615 Sec. 15. Section 19a-547 of the general statutes is repealed and the
616 following is substituted in lieu thereof (*Effective October 1, 2009*):

617 (a) The court may appoint any responsible individual whose name
618 is proposed by the Commissioner of Public Health and the

619 Commissioner of Social Services to act as a receiver. Such individual
620 shall be a nursing home administrator licensed in the state of
621 Connecticut with substantial experience in operating Connecticut
622 nursing homes or shall possess such other experience and education
623 that the court deems satisfactory to appropriately and professionally
624 implement such receivership. On or before July 1, 2004, the
625 Commissioner of Social Services shall adopt regulations governing
626 qualifications for proposed receivers consistent with this subsection.
627 No state employee or owner, administrator or other person with a
628 financial interest in the facility may serve as a receiver for that facility.
629 No person appointed to act as a receiver shall be permitted to have a
630 current financial interest in the facility; nor shall such person
631 appointed as a receiver be permitted to have a financial interest in the
632 facility for a period of five years from the date the receivership ceases.

633 (b) The court may remove such receiver in accordance with section
634 52-513. A nursing home receiver appointed pursuant to this section
635 shall be entitled to a reasonable receiver's fee as determined by the
636 court. The receiver shall be liable only in his official capacity for injury
637 to person and property by reason of the conditions of the nursing
638 home. He shall not be personally liable, except for acts or omissions
639 constituting gross, wilful or wanton negligence.

640 (c) The court, in its discretion, may require a bond of such receiver
641 in accordance with section 52-506.

642 (d) The court may require the Commissioner of [Public Health]
643 Social Services to provide for the payment of any receiver's fees
644 authorized in subsection (a) of this section upon a showing by such
645 receiver to the satisfaction of the court that (1) the assets of the nursing
646 home facility are not sufficient to make such payment, and (2) no other
647 source of payment is available, including the submission of claims in a
648 bankruptcy proceeding. The state shall have a claim for any court-
649 ordered fees and expenses of the receiver and any state advance
650 payments to the nursing home facility after a receiver has been
651 appointed which shall have priority over all other claims of secured

652 and unsecured creditors and other persons whether or not the nursing
653 home facility is in bankruptcy. [, to the extent allowed under state or
654 federal law.]

655 Sec. 16. Section 19a-561 of the general statutes is repealed and the
656 following is substituted in lieu thereof (*Effective October 1, 2009*):

657 (a) As used in this section, (1) "nursing facility management
658 services" means services provided in a nursing facility to manage the
659 operations of such facility, including the provision of care and services,
660 and (2) "nursing facility management services certificate holder" means
661 a person or entity certified by the Department of Public Health to
662 provide nursing facility management services.

663 (b) On and after January 1, 2007, no person or entity shall provide
664 nursing facility management services in this state without obtaining a
665 certificate from the Department of Public Health.

666 (c) Any person or entity seeking a certificate to provide nursing
667 facility management services shall apply to the department, in writing,
668 on a form prescribed by the department. Such application shall include
669 the following information:

670 (1) (A) The name and business address of the applicant and whether
671 the applicant is an individual, partnership, corporation or other legal
672 entity; (B) the names of the officers, directors, trustees or managing
673 and general partners of the applicant, the names of the persons having
674 ten per cent or greater beneficial ownership interest in the applicant,
675 and a description of each such person's relationship to the applicant;
676 (C) if the applicant is a corporation incorporated in another state, a
677 certificate of good standing from the state agency with jurisdiction
678 over corporations in such state; and (D) a certificate of good standing
679 from the licensing agency with jurisdiction over public health for each
680 state in which the applicant currently provides nursing home
681 management services;

682 (2) A description of the applicant's nursing facility management

683 experience;

684 (3) An affidavit signed by the applicant and any of the persons
685 described in subdivision (1) of this subsection disclosing any matter in
686 which the applicant or such person (A) has been convicted of an
687 offense classified as a felony under section 53a-25 or pleaded nolo
688 contendere to a felony charge, or (B) has been held liable or enjoined in
689 a civil action by final judgment, if the felony or civil action involved
690 fraud, embezzlement, fraudulent conversion or misappropriation of
691 property, or (C) is subject to a currently effective injunction or
692 restrictive or remedial order of a court of record at the time of
693 application, or (D) within the past five years has had any state or
694 federal license or permit suspended or revoked as a result of an action
695 brought by a governmental agency or department, arising out of or
696 relating to business activity or health care, including, but not limited
697 to, actions affecting the operation of a nursing facility, residential care
698 home or any facility subject to sections 17b-520 to 17b-535, inclusive, or
699 a similar statute in another state or country; and

700 (4) The location and description of any nursing facility in this state
701 or another state in which the applicant currently provides
702 management services or has provided such services within the past
703 five years.

704 (d) In addition to the information provided pursuant to subsection
705 (c) of this section, the department may reasonably request to review
706 the applicant's audited and certified financial statements, which shall
707 remain the property of the applicant when used for either initial or
708 renewal certification under this section.

709 (e) Each application for a certificate to provide nursing facility
710 management services shall be accompanied by an application fee of
711 three hundred dollars. The certificate shall list each location at which
712 nursing facility management services may be provided by the holder
713 of the certificate.

714 (f) The department shall base its decision on whether to issue or

715 renew a certificate on the information presented to the department and
716 on the compliance status of the managed entities. The department may
717 deny certification to any applicant for the provision of nursing facility
718 management services at any specific facility or facilities where there
719 has been a substantial failure to comply with the Public Health Code
720 or failure to provide the information required under subparagraph (D)
721 of subdivision (1) of subsection (c) of this section.

722 (g) Renewal applications shall be made biennially after (1)
723 submission of the information required by subsection (c) of this section
724 and any other information required by the department pursuant to
725 subsection (d) of this section, and (2) submission of evidence
726 satisfactory to the department that any nursing facility at which the
727 applicant provides nursing facility management services is in
728 substantial compliance with the provisions of this chapter, the Public
729 Health Code and licensing regulations or other laws and regulations
730 applicable to the operation of such facility, and (3) payment of a three-
731 hundred-dollar fee.

732 (h) In any case in which the Commissioner of Public Health finds
733 that there has been a substantial failure to comply with the
734 requirements established under this section or if the department
735 receives information from a licensing agency with jurisdiction over
736 public health in another state that the holder is not in good standing in
737 such state, the commissioner may initiate disciplinary action against a
738 nursing facility management services certificate holder pursuant to
739 section 19a-494. In addition to the remedies provided under section
740 19a-494, the commissioner may also assess such holder a civil penalty
741 not to exceed five thousand dollars per violation for any class A or
742 class B violation, as defined in section 19a-527, that occurs at a nursing
743 facility for which such holder provides nursing facility management
744 services, provided such fine in addition to any civil fine under section
745 19a-493 shall not exceed five thousand dollars per violation. Failure to
746 pay such penalties shall be subject to the remedies provided in section
747 19a-526.

748 (i) The department may limit or restrict the provision of
 749 management services by any nursing facility management services
 750 certificate holder against whom disciplinary action has been initiated
 751 under subsection (h) of this section.

752 (j) The department may, in implementing the provisions of this
 753 section, conduct any inquiry or investigation, in accordance with the
 754 provisions of section 19a-498, as amended by this act, regarding an
 755 applicant or certificate holder.

756 (k) Any person or entity providing nursing facility management
 757 services without the certificate required under this section shall be
 758 subject to a civil penalty of not more than one thousand dollars for
 759 each day that the services are provided without a certificate.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	17b-352
Sec. 2	<i>from passage</i>	17b-339
Sec. 3	<i>from passage</i>	New section
Sec. 4	<i>from passage</i>	New section
Sec. 5	<i>from passage</i>	17b-4
Sec. 6	<i>from passage</i>	New section
Sec. 7	<i>from passage</i>	New section
Sec. 8	<i>October 1, 2009</i>	19a-491(b)
Sec. 9	<i>October 1, 2009</i>	19a-493(b)(2)
Sec. 10	<i>October 1, 2009</i>	19a-498
Sec. 11	<i>October 1, 2009</i>	19a-503
Sec. 12	<i>October 1, 2009</i>	19a-528a
Sec. 13	<i>October 1, 2009</i>	19a-543
Sec. 14	<i>from passage</i>	19a-546
Sec. 15	<i>October 1, 2009</i>	19a-547
Sec. 16	<i>October 1, 2009</i>	19a-561

HS Joint Favorable Subst.

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Department of Social Services	GF - Cost	300,000	300,000
Comptroller Misc. Accounts (Fringe Benefits) ¹	GF - Cost	76,290	76,290
Resources of the General Fund	GF - Revenue Gain	Potential	Potential

Municipal Impact: None

Explanation

This bill makes a variety of changes concerning the financial oversight requirements of nursing homes. It also implements further reporting mandates, insurance requirements and certain financial restrictions for nursing homes and related entities.

It is anticipated that the Department of Social Services (DSS) will need up to 5 additional positions (at an annual cost of approximately \$300,000) to meet the additional oversight responsibilities included in the bill.

The state may realize a revenue gain should DSS or the Department of Public Health impose the various civil penalties included in the bill.

Should the provisions of this bill enhance the financial condition

¹ The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller on an actual cost basis. The following is provided for estimated costs associated with additional personnel. The estimated non-pension fringe benefit rate as a percentage of payroll is 25.43%. Fringe benefit costs for new positions do not initially include pension costs as the state's pension contribution is based upon the 6/30/08 actuarial valuation for the State Employees Retirement System (SERS) which certifies the contribution for FY 10 and

and stability of the nursing home system, the state may realize savings under the Medicaid program through fewer interim rate increases and homes in receivership.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

FY 11. Therefore, new positions will not impact the state's pension contribution until FY 12 after the next scheduled certification on 6/30/2010.

OLR Bill Analysis**sHB 6400*****AN ACT CONCERNING THE STRENGTHENING OF NURSING HOME OVERSIGHT.*****SUMMARY:**

This bill makes numerous changes in the law related to the financial oversight, management, operation, and licensure of nursing homes. It:

1. establishes new financial reporting requirements for nursing homes and nursing facility management services certificate holders;
2. allows the court to appoint a receiver of a nursing home upon a finding of “severe financial distress;”
3. makes changes to the Department of Public Health’s (DPH) certification process for management companies operating nursing homes;
4. requires nursing home property or building owners to comply with Public Health Code requirements concerning property maintenance and repair;
5. requires nursing home owners to annually submit to DSS along with their cost reports, proof of liability insurance coverage;
6. changes the certificate of need (CON) and licensure requirements when a nursing home changes ownership;
7. places certain restrictions on a nursing home operator’s ability to acquire a nursing home if the operator violates nursing home laws in Connecticut or in another state or has nursing home

problems related to Medicare and Medicaid;

8. makes changes to the membership and duties of the Nursing Home Financial Advisory Committee; and
9. places restrictions on nursing home indebtedness, rental payments, loan payments, and management fees.

(Different sections of the bill apply to different types of facilities. Some apply just to nursing homes, others apply also to residential care homes, rest homes, and intermediate care facilities for the mentally retarded.)

EFFECTIVE DATE: October 1, 2009, except for the provisions pertaining to CON; financial reporting requirements; the Nursing Home Financial Advisory Committee; liability insurance coverage; debt, rent, loan and management fee restrictions and allowable property costs for homes in receivership, all of which take effect upon passage.

§ 3 — FINANCIAL REPORTING REQUIREMENTS

The bill establishes new financial reporting requirements for nursing homes. Beginning July 1, 2010, it requires every home to obtain an annual independent audit and submit a copy of it to the DSS commissioner. The commissioner may also require homes to submit quarterly accounts payable reports in a format he prescribes. If the reports indicate a home is experiencing financial distress, the commissioner may require the home to report additional financial information, including debt agreements and interim financial statements.

The commissioner may also require any nursing facility management services certificate holder or any individual or entity that has at least a 10% beneficial ownership in the certificate holder or a nursing home to report financial information on any homes it owns, including those in other states. Under the bill, "beneficial ownership" includes ownership through any level or relationship of parent and

subsidiary corporations or partnerships.

If, after reviewing the above financial information or the home's annual cost report (financial information submitted annually to DSS for the purposes of rate setting), the DSS commissioner determines that a home's financial condition has changed for the worse, he must notify the DPH commissioner. He may also require the nursing home to report (1) monthly on its cash availability, vendor payment status, and employee payrolls; and (2) additional financial information to help determine the home's financial condition. The bill also requires him to report to the Nursing Home Financial Advisory Committee if he finds that a home is in financial distress and may not meet its operating costs.

The bill establishes criteria for the DSS commissioner to use to evaluate whether a nursing home's financial situation has deteriorated, including:

1. the frequency of Medicaid advances DSS grants to it as permitted by law;
2. unfavorable ratios of working capital assets to liabilities;
3. a high proportion of accounts receivable or payable for more than 90 days;
4. significant increases in accounts payable, unpaid state or local taxes, state user fees, or payroll related costs;
5. minimal or decreasing equity or reserves;
6. high levels of, or significant increases in, debt and borrowing costs; and
7. significant operating losses for two or more consecutive years.

Currently, nursing homes annually submit financial information to DSS for the purpose of rate setting. The information they submit includes expenditure, revenue, and balance sheet data. DSS audits this

information but does not use it to determine the home's financial viability.

§ 10 — DPH AND DSS INVESTIGATIONS

The bill allows the DPH commissioner when conducting an inquiry or investigation involving any healthcare institution to (1) issue subpoenas and (2) order the production of books, records, and documents. The law already allows the commissioner to do this when conducting a hearing. The law also allows him to inspect facilities, administer oaths, and take testimony under oath.

The bill allows the DSS commissioner, or his designee, to examine or audit the financial records of a nursing facility management certificate holder when the commissioner believes it is necessary or either the Office of Health Care Access or Nursing Home Financial Advisory Committee requests it. It requires nursing facility management certificate holders, as nursing homes must currently do, to (1) maintain all financial information, data, and records of operation for at least 10 years; and (2) maintain all financial information, data, and records relating to any real estate transactions affecting its operation for at least 25 years.

Finally, when conducting an inquiry, examination, or investigation of a nursing home or nursing facility management services certificate holder, the bill allows the DSS commissioner, or his agent, to (1) issue subpoenas; (2) order the production of books, records, or documents; (3) administer oaths; and (4) take testimony under oath. The commissioner may also ask the attorney general to petition the Superior Court to enforce any subpoena or order. Current law allows the commissioner to petition the court directly.

§§ 13-15 — NURSING HOME RECEIVERSHIP

Conditions for Appointment

The bill adds "severe financial distress" as a ground on which the court can appoint a receiver for a nursing home facility. (The law defines these as nursing homes, residential care homes, and rest homes

with 24-hour nursing supervision (CGS § 19a-521). But, residential care homes do not provide nursing care.) It defines “severe financial distress” as:

1. having more than 35% of the facility’s vendor accounts overdue by more than 120 days,
2. having payment of required employee pension and health insurance contributions that are more than 60 days overdue,
3. maintaining an unfavorable ratio of working capital assets to liability for more than one fiscal year,
4. incurring significant operating losses or maintaining minimal equity or reserves for more than one fiscal year, and
5. any other criteria DSS defines in regulations.

The bill permits the DSS commissioner to implement policies and procedures to define other financial distress criteria while in the process of adopting them in regulation, provided notice is published in the *Connecticut Law Journal* no later than 20 days after they are implemented. The policies and procedures are valid until final regulations are adopted.

Currently, a court may appoint a receiver for a nursing home if the home (1) is operating without a license or its has had its license suspended or revoked; (2) intends to close and has not made adequate arrangements to relocate its residents at least 30 days before closing; (3) experienced or is likely to experience a serious financial loss or failure that jeopardizes the health and safety of its residents; or (4) substantially violates the Public Health Code, other state laws, or Medicaid or Medicare rules.

In addition to appointing a receiver for the home, the bill also allows the court to appoint a receiver for (1) any individual or entity providing nursing facility management services in the home, (2) any owner of the property on which the home is located or the buildings it

uses, or (3) any legal entity owned or managed by a related party to the nursing home owner that provides goods or services to the home. The bill defines “related party” as an individual or organization related to a nursing home owner through an ability to control, ownership, family relationship, or business association including individuals related through marriage.

It allows the court to issue any necessary orders to a person that controls or possesses assets the receiver needs to fulfill his or her responsibilities.

Choice of Nursing Home Receivers

Current law requires a court, in appointing a receiver for a nursing home, to choose a responsible individual who (1) the DSS and DPH commissioners propose and (2) is a Connecticut-licensed nursing home administrator with substantial experience in operating Connecticut nursing homes. The bill allows the court to appoint an unlicensed person if the individual has other experience and education the court deems satisfactory.

The bill allows the court to require the DSS commissioner, instead of the DPH commissioner, to pay a nursing home receiver’s fees if it determines that the home’s assets are insufficient to do so and no other payment source is available. The state has a claim on the home’s assets for these payments. The bill gives the state a claim for any advance payments the state makes after the receiver’s appointment. It adds these costs to the requirement that claims for receiver’s fees have priority over all other creditors’ claims, but it removes the limitation that these claims have priority to the extent allowed by state or federal law.

Allowable Property Costs for Homes in Receivership

The bill prohibits a court, in certain situations, from setting property costs (rent, price, or interest rate) for nursing homes in receivership that exceed the fair rental allowance DSS sets for the facility.

By law, a receiver may not be required to honor a nursing home’s

lease or mortgage agreement if a court finds (1) the payment is due to someone who was an owner or controlling stockholder of the home when the agreement was made, or their affiliate or (2) the rent or property costs were substantially higher than what was reasonable at the time the contract was made. If the court grants such an exception but the real estate is necessary to continue to operate the home, the receiver can ask the court to set reasonable costs for the receiver to pay. The bill caps these costs at the fair rental allowance DSS sets for the facility. Current law sets no limits on the amount the receiver may request.

§§ 11 & 16 — NURSING FACILITY MANAGEMENT SERVICES CERTIFICATION

The bill adds to the required information an applicant must submit to DPH to obtain a nursing facility management services certificate. It defines a “nursing facility management services certificate holder” as an individual or entity DPH certifies to provide nursing facility management services. The law defines “nursing facility management services” as services provided in a nursing home to manage the home’s operations, including the provision of care and services.

By law, a “nursing home facility,” is a nursing home, residential care home, or rest home with 24-hour nursing supervision (CGS § 19a-521). But nursing facility management services do not serve residential care homes, thus it appears this section does not apply to these facilities.

Contact Information

The bill requires an applicant to provide the names of (1) its officers, directors, trustees, or managing and general partners and (2) anyone having 10% or more beneficial ownership interest in the applicant and a description of the person’s relationship to the applicant. If the applicant is an out-of state corporation, it must also provide a certificate of good standing from the agencies in that state that oversee corporations and public health licensing.

Current law requires an applicant to provide only its name and

business address and indicate whether it is an individual, partnership, corporation, or other legal entity.

Affidavits

The bill requires that each individual listed above, not just the applicants, sign the affidavits that current law requires applicants to submit disclosing the following:

1. any matter in which the person was convicted of or pleaded nolo contendere to a felony charge, or was held liable or enjoined in a civil action, if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property or
2. whether the person (a) has, within the past five years, had any state or federal license or permit suspended or revoked as a result of a government action related to health care or business activity, including actions affecting the operation of a nursing, continuing care, or residential care home in Connecticut or elsewhere or (b) is subject to a current injunction, restriction, or remedial court order at the time of the application.

Disclosure of Additional Nursing Homes

The bill requires an applicant to disclose the location and description of any out-of-state nursing home in which it currently provides management services or provided such services in the past five years.

Certification Determinations

The bill adds a condition under which DPH may wholly or partially refuse to issue or renew a certificate. It can deny certification to provide services at one or more facilities to an applicant that provided services in an out-of-state nursing home and failed to provide a certificate of good standing from the public health licensing agency in that state. The law already permits such denial for substantial noncompliance with the Public Health Code at a facility.

The bill requires applicants to submit information in their renewal applications showing that the homes they serve comply with certification requirements and any other applicable state laws and regulations.

Investigations

The bill allows DPH to conduct an inquiry or investigation concerning the issuance or renewal of a nursing facility management services certificate.

It also permits DPH, when the attorney general advises it, to conduct an investigation and seek an injunction or other action against an uncertified nursing facility management services agency. (The bill does not define this term). Current law allows this for unlicensed health care institutions.

Penalties

Under current law, if DPH finds substantial noncompliance with the certification requirements, the commissioner can initiate disciplinary action against an agency. The bill permits DPH to take disciplinary action if it receives information from an out of state public health licensing agency that an out-of-state nursing home for which the certificate holder has provided services has substantially failed to comply with that state's applicable laws and regulations.

The bill also allows the commissioner to impose a civil penalty on the management services agency of up to \$5,000 per violation for any class A or class B violation that occurs at a nursing home at which it provides management services. (A class A violation is one that presents an immediate danger of death or serious harm to a nursing home patient; a class B violation is one that presents a probability of death or serious harm.) If the home receives any other civil fine relating to its licensure, the combined fines cannot exceed \$5,000 per violation.

If the fine is not paid within 15 days, or the last day for appealing the penalty, or 15 days after a final Superior Court judgment on an

appeal, the DPH commissioner must notify the DSS commissioner, who may immediately withhold the amount of the civil penalty from the nursing home's next Medicaid payment.

The bill also allows the DPH commissioner to impose a civil penalty of up to \$1,000 per day against an individual or entity operating without a certificate.

§§ 4 & 6 — DEBT, RENT, LOAN, AND MANAGEMENT FEE RESTRICTIONS

The bill establishes certain restrictions on rent, debt, loan, and management fees a nursing home pays. It applies to any indebtedness or lease entered into or any management fees that take effect on or after April 1, 2009.

It defines "related party" as an individual or organization related to a nursing home owner through an ability to control, ownership, family relationship, or business association, including individuals related through marriage.

Management Fee and Loan Restrictions

The bill prohibits a nursing facility management services certificate holder related to a nursing home owner from being paid fees, including expenses from a facility for which it provides services, that exceed the management fee DSS sets for the home, unless DSS sets a higher fee after conducting a financial review of the agency.

It also requires a nursing home owner to use the proceeds of a loan secured with nursing home assets solely for the home's operation and improvement unless approved by the DSS commissioner.

Debt and Rent Restrictions

The bill requires the DSS commissioner, in consultation with the banking commissioner and the Connecticut Health and Educational Facilities Authority (CHEFA) executive director, to establish reasonable rates of indebtedness and property lease payments for nursing homes. It prohibits nursing homes or any related party that

owns the property on which the home is located from increasing their property lease payments or their indebtedness beyond the established levels without the DSS commissioner's permission. DSS must approve, deny, or modify a home's request within 60 days after the home submits any information the commissioner asks for, but may do so only if it determines the request will not adversely affect the home's financial viability or quality of care.

Violations

The bill allows the DPH commissioner to take certain enforcement actions for violations, including revoking or suspending the home's license, and restricting its acquisition of other facilities. It also allows the DSS commissioner to impose a civil penalty of up to \$25,000 for loan and rental payment violations. For management fee violations, the penalty is \$15,000 plus the amount by which the fee exceeds the DSS-approved fee. DSS may refer its finding to the DPH commissioner for appropriate action.

An individual may appeal a penalty through DSS's rate-setting appeal process. By law, health care facilities can appeal the Medicaid rates DSS sets for them and DSS must hold "rehearings." If the issue is not resolved at a rehearing, either DSS or the facility can request binding arbitration (CGS § 17b-238(b)).

§ 1 — CERTIFICATE OF NEED (CON)

The bill requires a nursing home, intermediate care facility for the mentally retarded (ICF-MR), or a residential care home to apply to DSS for a CON whenever a transfer of its ownership or control is proposed, not just when this occurs before the home is first licensed. Because of the current moratorium on new nursing home beds, nursing homes can assume ownership of existing beds only through such a transfer. Therefore, DSS is not currently issuing CONs for such transfers.

The bill applies to all proposed transfers the current requirement that a CON applicant submit a letter of intent to DSS before submitting the CON application. It consequently extends to any facility proposing

an ownership or control transfer the current requirement that it notify the Office of the Long Term Care Ombudsman that it has submitted a letter of intent. It exempts all proposed transfers from the requirement that the letter of intent include the capital costs, location, and project description.

The bill adds the following factors for DSS to consider when it reviews a CON transfer application:

1. the applicant's financial condition and viability,
2. the impact of the transfer on the home's payment rate,
3. any real property lease or debt instrument, and
4. any nursing facility management services agreement.

The law already requires DSS to consider the applicant's financial responsibility and business interests and whether the facility is able to continue to provide needed services.

Finally, the bill exempts from the CON requirements, a transfer of ownership if the facility is in receivership and is closed by a Superior Court order. It is unclear how such an ownership transfer would occur if the facility is closed. It appears the bill intends to exempt a transfer of ownership ordered by Superior Court for a facility that is in receivership. By law, if a court-appointed receiver determines within the first six months that the facility is unable to continue to operate in compliance with state and federal law, he or she must seek proposals to purchase the facility. If the facility is not purchased within six months of the receiver's appointment, he or she must request an immediate court order to close the facility and make arrangements for the residents' orderly transfer (CGS § 19a-545).

§ 12 — NURSING HOME ACQUISITION

The law prohibits a nursing home operator who has violated nursing home laws or had problems related to Medicare and Medicaid from acquiring a nursing home for five years. It applies to an operator

with any civil penalties for nursing home violations imposed by DPH or another state over two years. The prohibition also applies to operators who have received Medicare or Medicaid sanctions or had their provider agreements for these programs terminated or not renewed.

The bill limits the prohibition (1) for civil penalties, to those imposed during the two years before submitting the application, rather than any two-year period and (2) for Medicare and Medicare sanctions, to those other than civil penalties under \$10,000. (Current law imposes the acquisition prohibition for any intermediate Medicare or Medicaid sanctions.) The application must also include any additional information the DPH commissioner deems necessary. Under the bill, if any of these conditions is present, the five-year prohibition on further acquisition continues to apply.

Notwithstanding these limitations, the law allows the DPH commissioner, for good cause, to approve a potential licensee's or owner's application to acquire a nursing home before the five-year period expires.

§ 9 — CHANGES IN BENEFICIAL OWNERSHIP

Current law requires DPH to give its prior approval for a change in ownership or beneficial ownership of 10% or more of the stock of a corporation that owns, operates, or maintains a nursing home, residential care home, or rest home. The bill specifies that beneficial ownership includes ownership through any level or relationship of parent and subsidiary corporations and partnerships.

It also requires the owner to provide to DPH the identities of, and any additional information DPH requires regarding, individual shareholders, partners, or members who have a beneficial interest in the facility or any healthcare institution, such as a hospital, home health care agency, assisted living services agency, or homemaker-home health aide agency.

§ 8 — FACILITY MAINTENANCE AND REPAIRS

Under current law, nursing home, residential care home, or rest home property or building owners that are not the facility's license holder must submit a copy of the lease agreement to DPH indicating the person or entity responsible for maintenance and repair. The lease must be submitted whenever the facility's license is renewed and whenever the property owner changes.

If a DPH investigation reveals any Public Health Code violations, the law allows the commissioner to require the owner to sign a consent order to bring the facility into compliance. The bill allows the commissioner, alternatively, to impose a civil penalty of up to \$1,000 for each day the owner violates the code or the consent order. It also permits the consent order to include the appointment of a temporary manager to complete any required improvements or repairs. It allows the attorney general, at the DPH commissioner's request, to petition the Superior Court for an injunction to ensure compliance with the consent order.

§ 7 — PROOF OF LIABILITY INSURANCE COVERAGE

The bill requires nursing homes to annually submit to DSS along with their cost reports, proof of liability insurance coverage on a form prescribed by DSS. A home must show its coverage for negligence or medical malpractice and property damage and the coverage amounts. (The bill does not establish minimum coverage amounts.)

Starting January 1, 2010, the bill requires DSS to report annually to the Human Services and Nursing Home Financial Advisory committees, information concerning nursing homes' liability insurance coverage.

By law, nursing home owners must submit certificates of malpractice and public liability insurance coverage to DPH as a condition of licensure; the law does not specify minimum coverage amounts.

§§ 2 & 5 — NURSING HOME FINANCIAL ADVISORY COMMITTEE

The bill removes three members from the Nursing Home Financial

Advisory Committee: the director of the Office of Fiscal Analysis or his designee and one representative each from the nonprofit and for-profit nursing home industries. It adds the comptroller or her designee to the committee's membership. The DSS and DPH commissioners, the secretary of OPM, and the executive director of the Connecticut Health and Educational Facilities Authority (CHEFA) or their designees remain committee members. It also removes the current requirement that vacancies be filled by the appointing authority.

The bill requires the committee to recommend appropriate action to the DPH commissioner, as it must currently do for the DSS commissioner, when it receives a report relating to nursing homes' financial solvency and quality of care. It removes the requirement that the committee's recommendations be limited to improving the financial condition of homes in financial distress. The DSS commissioner must also notify the committee of any nursing home's interim rate request.

Starting January 1, 2010, the bill requires the committee to report annually on its activities to the Appropriations Committee, as well as the Human Services, Public Health, and Aging committees. And starting October 1, 2009 the committee must also meet quarterly with the chairs and ranking members of the Appropriations, Human Services, and Public Health Committees and the long-term care ombudsman to discuss its activities relating to nursing homes' financial solvency and quality of care.

The bill repeals DSS' authority, in conjunction with DPH, to adopt regulations to establish requirements for the reports on nursing homes' financial solvency and quality of care that are submitted to the Nursing Home Financial Advisory Committee (CGS § 17b-4 (c)).

The Nursing Home Financial Advisory Committee examines nursing homes' financial solvency, supports DSS and DPH's oversight mission, and recommends appropriate action for improving the financial condition of any home in financial distress.

COMMITTEE ACTION

Human Services Committee

Joint Favorable Substitute

Yea 18 Nay 0 (03/10/2009)